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South Carolina House of Representatives

# Legislative Update & Research Reports

Robert J. Sheheen, Speaker of the House

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## The Abortion Issue and Pending Legislation

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On July 3, the Supreme Court handed down the decision on Webster v. Reproductive Services -- the first significant court ruling on abortion since Roe V. Wade. The following is a brief research report on the issue, written by legislative intern Shirley Gossett. The report contains a brief summary of the decision, taken from the publication, Law Week. It also contains polling information published in The State and summaries of abortion-related bills currently pending before the General Assembly.

### Summary of the Decision

On the day prior to recessing the 1988-89 term, the Supreme Court handed down the anxiously awaited decision on Webster v. Reproductive Health Services. Although the Webster decision did not overturn Roe v. Wade, many observers felt that the July 3 ruling, along with the court's acceptance of three additional abortion cases for review for next term, may "whittle away at (the) right to abortion."

The July 4 edition of Law Week featured a summary of the court's decision in Webster. The Law Week summary stated that while the Missouri law placed momentous restrictions on a woman's ability to obtain an abortion, the decision stopped short of overturning the 1973 Roe decision. Here are excerpts from that summary:

The provisions of the Missouri statute at issue included a preamble declaring that human life begins at conception, a ban on the use of public facilities or public employees to perform abortions, and a requirement that physicians perform tests to determine viability on any fetus believed to be 20 weeks or older.

Chief Justice Rehnquist declared for five justices that the preamble does not actually regulate abortion and, consequently, that there is no need to pass constitutional judgment upon it. Rehnquist was able to get the same majority -- Justices Kennedy, White, Scalia and O'Connor -- to join in his opinion that the state's ban on the use of public facilities and public employees in the performance of abortions is consistent with the court's earlier abortion precedents.

Writing for a plurality that included Kennedy and White, Rehnquist found that the provision requiring doctors to determine fetal viability only requires a physician to perform such tests as are necessary in accordance with the exercise of the physician's professional judgment. This provision, he said, is consistent with the state's interest in protecting potential human life. That such tests will be performed during the second trimester did not trouble Rehnquist, since he urged rejection of Roe's 'rigid' trimester framework.

It was at this point that O'Connor departed from Rehnquist's opinion. She agreed that the performance of the tests to ascertain fetal viability is consistent with the state's interest in potential human life; she found it unnecessary, however, to re-examine the trimester framework set out in Roe.

Scalia, while agreeing that the testing provision should be upheld, sharply criticized the plurality's reasoning, calling the court's refusal to reaffirm or repudiate Roe outright as the 'least responsible' of the options before it. He made no secret of his contempt for Roe.

Justice Blackmun, joined in dissent by Justices Brennan and Marshall, reiterated his belief that the trimester framework is still sound. Justice Stevens also dissented, focusing on the preamble's 'finding' that life begins at conception. This 'finding,' he said, is an endorsement of a Christian religious tenet and, accordingly, violates the First Amendment's Establishment Clause.

### The South Carolina Poll

On the day of the Supreme Court decision, The State published the results of its South Carolina Poll. On the issue of abortion, The State found that "South Carolinians don't favor total freedom for abortion or a total ban." The poll was conducted for The State during the last week in June. The sampling error is 4.4 percent.

According to South Carolina Poll results, when presented with a number of options, 47 percent of the 507 South Carolinians questioned felt a "women should be allowed to have abortions only when the mother's life is in danger or in the case of rape or incest."

Seven percent favored the current law, which allows abortions through the sixth month.

Twenty-seven percent favored limiting abortions to the first three months.

Eleven percent wanted all abortions banned.

Eight percent didn't know.

On the question of parental consent for teenagers to have an abortion, fewer than 15 percent of the respondents said teenager girls 17 and under should not need permission from anyone to have an abortion. Of the majority favoring permission, a little less than half said the girls should get permission from their parents or the court; more than 25 percent said the girls should get permission unless the pregnancy resulted from rape or incest.

#### Pending Legislation

A number of abortion-related bills are pending before the General Assembly. The following summaries highlight each of these proposals and their current legislative status:

Abortion and the Viable Fetus (H.3454, Rep. Fair). Under this bill, no abortion of a viable fetus could be performed, unless, in the judgment of the doctor, it is necessary to save the mother's life. A doctor would have to determine the viability of the fetus to live outside the womb if it is more than 20 week gestational age. He further would be required to select a method of abortion that would most likely preserve the life of the fetus. A second doctor would have to be present to care for the fetus if it is born alive.

Violation of this legislation, if enacted, would be classified as a felony and carry a fine of not more than \$5,000 and/or imprisonment for up to two years.

Status: Referred to House Judiciary Committee 2/8/89.

Abortion and the Fetus (H.3395, Rep. Fair). This bill would require a physician to inform a woman of the availability of anesthetic or analgesic to alleviate organic pain caused to the fetus by the method of abortion to be used. Failure to inform the woman of the availability of such pain relievers would be a misdemeanor with a fine of not more than \$1,000 or imprisonment for not more than one year.

Status: Referred to House Medical, Military, Public and Municipal Affairs Committee.  
Committee report: Majority favorable with amendments;  
minority unfavorable 4/18/89.

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Husband's Consent for Abortion (S.731, Sen. Shealy). This legislation would require consent from husbands when their wives seek an abortion, and they are married and living together at the time of conception.

Status: Referred to Senate Judiciary Committee 4/27/89.

Regulation of Facilities Performing Abortions (S.761, Sen. Geise). This bill requires that DHEC formulate and enforce regulations for the disposal of fetal tissue and remains.

Status: Referred to Senate Medical Affairs Committee 5/4/89.

Parental Consent for Abortion (H.3122, Rep. Hayes).

This bill would define the requirements that must be followed before an abortion could be performed on a minor. The major point of this legislation is to require parental consent before a minor under 17-years-old can obtain an abortion. The consent must be written and signed by one parent, or the legal guardian, and the minor daughter involved. In divorce cases, written permission is needed only from the parent with custody.

The minor may also petition the circuit or family court for consent, known as judicial by-pass. The only exception to these consent requirements is in cases of incest, medical emergency or when the minor is unconscious as a result of battery. In cases of incest, doctors must report the crime to law enforcement within 24 hours. The House rejected rape as an exception to parental consent.

Status: Passed the House May 22, 1989.  
Referred to Senate Medical Affairs Committee.  
Recalled from committee and placed on the Senate calendar in place of S.118, another abortion-related bill 5/31/89.

How Other States View Parental Consent

A number of states have enacted statutes regarding parental notification and/or consent for teenage abortions. These statutes address such issues as the age of the minor, marital status, method of consent or notice, and role of the courts in waiving consent.

Some state statutes have been litigated. Several have been enjoined by the court, and a few have been declared unconstitutional. Below is a chart compiled by The Council of State Government regarding the status of parental consent or notification laws as of March 1989.

Status of State Laws: Parental Notification and Consent

**Enforceable**

Parental Consent Laws

Alabama  
Florida  
Indiana  
Kentucky  
Louisiana  
Massachusetts  
Missouri  
North Dakota  
Rhode Island

Parental Notification Laws

Utah  
West Virginia

**Enjoined by Court Order**

Arizona  
Arkansas  
California  
Mississippi  
Pennsylvania

Georgia  
Illinois  
Maine  
Minnesota  
Nebraska  
Ohio  
Tennessee

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**Inactive and Unconstitutional**

**Parental Consent Laws**

Alaska  
Colorado  
Delaware  
New Mexico  
SOUTH CAROLINA  
South Dakota  
Washington

**Parental Notification Laws**

Idaho  
Montana

Research Report: Infectious Waste Management

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After two years of debate, the General Assembly passed an Infectious Waste Management bill this year -- one of the most significant environmental bills passed during the 1989 session. Here is a report on the issue, researched and written by legislative intern Shirley Gossett.

Introduction

When the topic of medical waste comes up in conversation, frightening stories abound -- many of them fanned by fear of AIDS. Media stories reinforced these fears. In Indiana, young children were found playing with discarded syringes and vials of blood from a medical clinic. Authorities determined some of the blood samples were from an AIDS patient, and several of the children had to undergo AIDS testing.

Here in South Carolina, a forgotten truck trailer filled with used AIDS materials was discovered in Charleston after being parked by a contract hauler five years ago. The trailer had been loaded in 1983 for transportation and disposal but never received the permit. After a second disposal attempt in 1985, the trailer was apparently overlooked until last year when it finally transported to a disposal facility in another state.

Last summer also brought stories of medical debris washed up beaches of both the east and west coasts. An official of the Environmental Protection Agency, quoted in the January 1989 issue of Discover, stated "(t)he waste-filled beaches of this (1988) summer were an absolute nightmare." South Carolina coastal residents from Sullivan's Isle to Kiawah, Seabrook and Hilton Head also were affected by the blight of medical debris that "rolled in with the tide." According to an article in the State last August, DHEC coastal district offices, especially in the Myrtle Beach area, were "deluged with phone calls, ranging from people who said they saw medical waste 'But, gee, it got away,' to people who are coming to Myrtle Beach for vacation and (questioning), 'Is it safe to swim; maybe I shouldn't come,'"



According to the Omni magazine article "The Trashing of America", 7,000 hospitals nationally produce an estimated "1.5 million pounds of infectious, or 'red bag' waste daily." This figure does not include medical wastes produced by private doctors, research facilities, and dental offices that, by and large, go unregulated.

Here in South Carolina, DHEC estimates that from the state's 93 hospitals and 166 nursing homes, there are 3,195 tons of infectious waste produced yearly.

Legislative concern with this issue was evident in last December's survey of House members. Asked to rank the most important issues for the 1989 session, the regulation of infectious waste and hazardous waste tied for second place in the House survey. Only automobile insurance reform ranked higher than these two environmental issues in the estimation of House members responding to the survey.

#### Background

Until the passage of legislation this session, infectious waste was treated as solid waste in South Carolina and no accepted definition of infectious waste existed, according to DHEC officials. DHEC had no regulatory authority over the accumulation and transportation of infectious wastes; therefore, making it difficult for the agency to respond to public concerns over such problems as last summer's beach trash or the acceptance of infectious waste by two Low Country landfills.

As previously noted, South Carolina produces approximately 3,195 tons of infectious waste a year. However, this amount does not reflect the waste generated by doctor or dental offices, small medical clinics, blood and plasma centers and veterinarians. These producers of 50 or less pounds per month are excluded from DHEC statistics due to their small waste quantities.

Of the 93 hospitals in the state, 50 incinerate infectious waste on-site. This takes care of disposing of most of the infectious waste generated yearly in the state. Only 154 tons from South Carolina hospitals and other state institutions are incinerated at the single commercial facility in Hampton County.

Southland Exchange Joint Venture, the Hampton County facility, is capable of handling between 80 and 100 tons daily. According to DHEC, Southland was processing approximately 90 tons a day at the end of May.

In-State v. Out-of-State Infectious Waste  
Treated in Hampton County

Out-of-state waste:	32,489 tons/year	99.53%
In-state waste:	154 tons/year	0.47%

With last year's closing of the Great South Services site in Richland County, South Carolina has a single infectious waste disposal facility. Southland Exchange Joint Venture in Hampton County remains the state's only commercial infectious waste operator.

1988 Infectious Waste Contingency Fund.

Last year, the General Assembly approved a proviso to the 1988-89 Appropriations Act, mandating the levying of fees on the disposal of infectious waste in South Carolina. This fee requirement became effective in July, 1988. Under this proviso, disposal fees for out-of-state waste were set at \$18.00 per ton. The in-state waste fee was set at \$13.00 per ton.

The proviso also created the Infectious Waste Contingency Fund. All fees and penalties collected from commercial sites will be deposited in this fund to clean up any accidents that might occur. In addition, an amount of \$1.50 a ton is used to reimburse the counties for collecting the fees where the facilities are located. Full-time health inspectors also must be assigned by DHEC to oversee all commercial operations.

DHEC records show that from July 1988 through March 1989, \$1,483 dollars in fees were collected for the disposal of in-state waste and \$425,055 for the disposal of out-of-state waste. This represents the receipt of 114.2 tons of in-state waste and 23,605.8 tons of out-of-state waste. Most of this waste was handled by the Hampton County incinerator.

Of these fees collected, the Infectious Waste Contingency Fund received \$390,812.47; \$35,580 was placed in the county fund and \$81,855 was set aside for inspector fees.

1989 Infectious Waste Legislation

The 1989 session saw the passage of infectious waste legislation in the form of S.267, the South Carolina Infectious Waste Management Act. The bill was signed into law June 8.

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Under this new act, infectious waste is defined as any of the following:

- sharps;
- cultures and stocks of infectious agents and associated biologicals;
- human blood and blood products;
- pathological waste;
- contaminated animal carcasses, body parts, and bedding of animals intentionally exposed to pathogens;
- isolation waste pursuant to the "Guidelines for Isolation Precautions in Hospitals", Center for Disease Control.

### **DHEC Authority**

Under the new act, DHEC is granted the authority to establish and collect registration and permit fees for infectious waste generators and transporters. They may further conduct inspections, obtain samples, investigate and conduct research concerning the operation and maintenance of any infectious waste generation and management site. Prior to any permit or registration revocation, a hearing will be provided, as detailed in the South Carolina Administrative Procedures Act.

Additionally, information of an imminent health hazard may provoke a number of actions by DHEC, the following are some options stated in the legislation:

- Entering a facility's premises and accessing necessary actions.
- Issuing a directive for necessary action to prevent or eliminate a practice that is causing a health hazard.
- Issuance of a restraining order against the facility upon a showing by DHEC of a potential health hazard.
- Samples may be taken from the facility and transport vehicles. Samples will also be furnished to the owners or agents of the facility, as will results of sample analysis.

### **Containment and Storage of Infectious Waste...**

The South Carolina Infectious Waste Management Act sets specific standards for containment and storage of materials. Listed are the criteria outlined in the act:

- Storage of these waste materials must be such that these materials are protected from animals and weather conditions.
- Infectious wastes must be separated from other wastes at the point of origin and separate containers must be used until treatment is completed.

- Approved disposable or reusable containers, which maintain the integrity of their contents and can be tightly closed and secured, are to be used.
- Sharps must be maintained in rigid puncture-resistant containers.
- Labeling must be clearly identifiable as infectious wastes.
- Storage conditions and periods of time of storage must be adhered.
- States using a facility located in South Carolina must comply with all DHEC regulations.

#### Treatment and Disposal

All treatment and disposal facilities in South Carolina must be approved and permitted by DHEC. Methods of treatment of infectious waste will consist of:

- Incineration,
- Steam sterilization,
- Chemical disinfectant, or
- Any other DHEC-approved treatment method.

Following treatment, waste may be disposed of as any other waste. Some liquid wastes may be discharged directly into wastewater disposal systems without treatment. Likewise, recognizable human anatomical human remains may be disposed of interment.

#### Infectious Waste Generators

In-state generators must register with DHEC within 90 days of the regulations going into effect. All infectious waste generators must label containers with clear and legible identification prior to transportation. In-state generators of less than fifty (50) pounds are exempted from all regulations except registration with DHEC and the containment of sharps in puncture-resistant containers that may be disposed of as any other solid waste. However, cultures, human blood, and blood products must be managed in accordance with DHEC regulations.

This legislation further provides that all in-state and out-of-state transporters bringing infectious waste into the state must register with DHEC within 90 days after the effective regulations.

It is unlawful for anyone operating a facility in South Carolina to accept waste from a state that prohibits the treatment, storage, or disposal of infectious waste within its own boundaries.

### Refusal of Registrations and Permits

A registration to transport waste or to operate a facility may be refused if within the prior three years the applicant has been:

- Convicted of a violation of the state infectious waste law or a federal law pertaining to solid or hazardous waste.
- Found in contempt of a court order pertaining to enforcement of the state infectious waste or a federal hazardous waste law.
- Convicted of a crime of moral turpitude.

Provisions are provided in this legislation for permits and registrations to be reissued if the person demonstrates rehabilitation.

### Expansions and New Facilities

Permits furnished by DHEC must be issued prior to the establishment of a new facility or the expansion of an existing facility. Need must be demonstrated for the facility or its expansion, and this need must be based solely on in-state waste generation. Exceptions exist for present operations.

### Fines for Violations

Fines for violations are to be:

For first offense -- \$10,000 a day or imprisonment for one year.

Second and subsequent offenses -- a fine of \$25,000 a day or two years imprisonment or both.

### County Reimbursement

The Infectious Waste Contingency Fund is amended so that counties having waste facilities are reimbursed at a rate of one-third (1/3) of the fees collected. Also hospitals and non-commercial treatment facilities are exempted unless they treat wastes for others for a fee.

### Other States and the Law

In 1988, the Council of State Governments surveyed the states regarding their management of infectious waste. The survey was completed in February. Here are its findings:

Survey Findings:

- Most states attempt to define infectious waste in regulation.
- Permits are not the choice of infectious waste regulators. When they are required, they are issued by the state's environmental agency and usually apply to off-site disposal facilities.
- On-site handling of infectious waste is usually governed by state health department guidances.
- 31 states single out packaging and labeling requirements to be included in their infectious waste rules. Packaging is a key to minimizing waste generator and handler exposure, especially the disposal of sharps.
- Storage facility specifications, including the length of time wastes can be maintained on-site, are likely improvements as states modify their programs.
- Transportation and record keeping requirements have been included, or are being examined by 3/5 of the states. These include designating non-compacting trucks as the only acceptable transport vehicle, requiring the labeling of the transport truck, procedures to clean vehicles after use, and type of shipping papers required.
- A majority of the states -- 72 percent -- name incineration as a recommended treatment under existing or proposed regulations. In five states, incineration is required. These are Alabama, Arkansas, Colorado, New Hampshire and Tennessee.
- 27 states -- or 53 percent -- recommend steam sterilization. 18 states include chemical treatment as an alternative.
- 56 percent of the states responding have already, or are considering, requiring pretreatment before land disposal. Under some conditions, at least 12 states allow land disposal without treatment under certain conditions.
- Unlike state hazardous waste laws, three requirements usually not included when a state upgrades its hazardous waste regulations are contingency plans and spill management; closures, and financial assurances.

States with most stringent infectious waste requirements:

California  
Massachusetts  
New York  
Tennessee

States that mandate at least some permitting:

Illinois  
New Hampshire  
North Carolina  
Oklahoma  
Pennsylvania  
Rhode Island  
Vermont

States that have no requirements and have no plans to regulate:

Alabama  
Michigan  
Montana  
Nevada  
North Dakota  
Wyoming

EPA Definition of Solid Waste

EPA estimated in the Fall 1988 that approximately 10 to 15 percent of all medical wastes is estimated to be infectious waste. EPA presently identifies six types of waste as potentially infectious:

- -Cultures and stocks of infectious agents and associated biologicals.
- Pathological wastes.
- Human blood and blood products.
- Contaminated sharps (such as needles and scalpels).
- Contaminated animal carcasses, body parts, and bedding.
- Isolation waste.

According to EPA, about 70 percent of hospital waste is incinerated on-site, 15 percent is sterilized in an autoclave, and 15 percent is transported off-site for treatment. Incineration is used in the disposal of 10 percent of waste transported off-site. According to EPA data, several studies have shown that hospital wastes are generally less virulent than typical domestic waste.

A Final Note

While incineration is the most popular and accepted method of treatment and disposal, it has not always been administered in a safe fashion. Incineration improperly done has caused other hazards, including affecting air quality.

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NOTICE

The 1989 Post Session Report is in the process of being compiled and printed. House members can expect to receive a copy of the annual report in the mail in August.

With the end of the legislative session, the Legislative Update will be published once a month. House members will receive their copies through the mail.

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Legislative Update Index

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Here is an index to all bills and legislative issues featured in the 1989 Legislative Update. This index is arranged by subject and House or Senate bill number. Research reports on the issues are capitalized.

It is important to note that this index is only for information that appeared in the Legislative Update for this session. It is not an index of all bills or all issues that have come up before the House.

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### End-of-Session Bill Summary Index

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For the past two years, the Legislative Update has provided year-end summaries of the significant legislation ratified or passed by the House. This is done to assist House members until the Post Session Report is published later in the summer.

Here is an index of the bills included in the end-of-session summary.

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